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S.B. CIVIL WRIT PETITION NO.4895/1993
(MAHESH KUMAR VS. STATE OF RAJ. & ORS.)

Date:- 27.07.2007

**HON'BLE MR. RAJESH BALIA,J.**

Ms. Kusum Rao, for the petitioner
Mr. L.R.Upadhyay, Dy.G.A.

Heard learned counsel for the parties.

The petitioner who was initially appointed as dresser on 21.08.1984 in MGH and was later on placed as ward boy on 04.08.1988, seeks a mandamus to the respondents for regularization of his service as Enquiry Attendant/Receptionist at the Enquiry Counter, which function according to petitioner, he is discharging since 1988-89. It is alleged that since 1989 he has been transferred to New Teaching Hospital where he was working until filing of the writ petition and discharging the function of the Enquiry Attendant/Receptionist at the Enquiry.

It has further been averred that two permanent vacancies of the aforesaid post exist which have not been filled by the respondents for long.

It is stated by the respondents that such posts are reserved to be filled by surplus employees from other department, as per the direction of the Commission as

Several employees of the different departments were declared surplus. The respondents have also denied that the petitioner was ever required to discharge the function of the receptionist for long period, but they have said that he worked as ward boy and the duty of the petitioner is sometime in the morning, some time in the evening and some time in the noon as a ward boy as per change in shift. During holiday and other days, three ward boy's discharge their duties in the ward. It is also stated that if any appointment on the posts of receptionist is to be made by direct recruitment, in stead of filling the same by absorption of surplus employees, such vacancies shall be advertised. If the petitioner is eligible, he could also apply for the post. But he cannot claim for regularization on the post of receptionist.

The petitioner has placed an order dated 08.07.1983 by which a ward boy Ramesh Kumar has been posted by the transfer as receptionist. However, I find from the order itself that said person has been appointed as receptionist after due selection by the Committee and that is what has been stated in reply filed by the respondent. Therefore, Ramesh Kumar's case does not provide a comparable parallel. Since the petitioner was appointed as ward boy and has discharged functions of ward boy as per the respondents and the alleged case is a case of appointment

through regular selection, no relief can be granted to the petitioner by invoking the ground of hostile discrimination on the higher post.

However, it is urged by the learned counsel that there being no dispute about the petitioner's appointment as a ward boy since long, the petitioner is entitled to release of selection scales under the orders of the Government dated 25.01.1992. Learned counsel for the petitioner states that benefit of selection scale on completion of 9,18 & 27 years has not been granted to him, though he fulfills other conditions of the said order only due to the pendency of the writ petition. Withholding of the benefit of the release of the selection scale to the petitioner after his appointment on the post of ward boy was not justified. The respondents are directed to examine his case and if otherwise eligible for the same, he may be given benefit of the selection scale as and when its become due to him. Subject to the aforesaid, the petition is dismissed as no relief of the regularization on the higher post can be granted to the petitioner.

**(RAJESH BALIA),J.**

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